Filed 3/27/19 In re T.L. CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re T.L., a Person Coming Under the Juvenile Court Law.	
SOLANO COUNTY HEALTH AND HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. Q.C., Defendant and Appellant.	A154621 (Solano County Super. Ct. No. J44116, J44117, J44118, J44119)

Q.C. appeals from jurisdictional and dispositional orders issued in a juvenile dependency matter (Welf. & Inst. Code, § 300).[1] She contends (1) notice sent to specified Indian tribes pursuant to the Indian Child Welfare Act (ICWA, 25 U.S.C. § 1901 et seq.) was insufficient, and (2) a sustained jurisdictional allegation under section 300, subdivision (j) should be modified. We will vacate in part the jurisdictional finding for further consideration in the juvenile court, and otherwise affirm the orders.

I. FACTS AND PROCEDURAL HISTORY

Q.C. is the mother of A.L., Th.L., C.L., and Ta.L. In April 2018, the Solano County Health and Human Services Department (Department) filed a dependency

[1] Except where otherwise indicated, all statutory references are to the Welfare and Institutions Code.

petition as to each child, including allegations against Mother and J.L. (Father) under subdivisions (a), (b), (g), and (j) of section 300. The children were detained.

The Department's Jurisdiction/Disposition Report recommended that the court sustain the jurisdictional allegations as amended, declare the children to be dependents of the juvenile court, continue their out-of-home care, and order reunification services to the parents with specified case plans.

The Department's report also represented that the ICWA "does or may apply." According to the report, Mother and the maternal grandmother denied any Native American ancestry, but a maternal great-aunt claimed that the family has Cherokee ancestry.

On May 31, 2018, the Department filed a "Court Hearing Data Sheet/Proof of Service" representing service of a Notice of Proceeding for Indian Child (form ICWA-030) on the Bureau of Indian Affairs, the Cherokee Nation, and the Eastern Band of Cherokee and United Keetoowah Band of Cherokee tribes in each child's case. The ICWA-030 forms also appear in the clerk's transcript.

At the jurisdiction and disposition hearing on June 12, 2018, the Department requested a continuance because the ICWA notices had only recently been sent. The court continued the hearing to June 19, 2018.

On June 19, Mother appeared at the hearing and filed a Notification of Mailing Address. She also filed a Parental Notification of Indian Status, stating that one or more of her relatives is or was a member of a federally recognized tribe, without identifying the tribe.

After the parties negotiated amendments to the allegations of the petition, Mother's counsel stated she was "prepared to object and submit to the amended allegation." Father's counsel submitted. The court sustained the jurisdictional allegations under section 300, subdivisions (b), (g), and (j) – specifically, allegations b-1 and j-1 as to Mother and allegations b-2 and g-2 as to Father. As agreed by the Department, the court struck allegations a-1 and g-1. The court ordered reunification services for the parents and ordered that Mother undergo a psychological evaluation.

Although the minute order of the jurisdiction and disposition hearing did not record any finding regarding ICWA, the court's written jurisdictional order and written dispositional order indicate that each child "may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law," and that "[p]roof of such notice was filed with the court."

This appeal followed.

II. DISCUSSION

A. Indian Child Welfare Act

When the juvenile court knows or has reason to know that an Indian child is involved, the ICWA requires the Agency to notify the Indian child's tribe of the pending proceedings and its right of intervention. (25 U.S.C. § 1912(a); see Cal. Rules of Court, rule 5.481.) Under California law, the Agency must send notice, return receipt requested, to "all tribes of which a child may be a member or eligible for membership." (§ 224.2, subd. (a)(3).)

Notice to the tribe must be sent to the tribal chairperson, unless the tribe has designated another agent for service. (§ 224.2, subd. (a)(2); see 25 C.F.R. § 23.105.) The designated tribal agents for service of ICWA notice are published in the federal register. (See *In re J.T.* (2007) 154 Cal.App.4th 986, 994 (*J.T.*); *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1201; 25 C.F.R. § 23.12 (2007).) When the ICWA notice in this case was sent in May 2018, the designated tribal agents were identified at 82 Fed. Reg. 12986 et seq. (3/8/2017).

The Agency must file with the juvenile court the ICWA notice, return receipts, and any response received from the tribes relevant to the child's Indian status. (§ 224.2, subd. (c); see Cal. Rules of Court, rule 5.482(a)(1); *In re Marinna J.* (2001) 90 Cal.App.4th 731, 739–740 fn. 4.) The juvenile court has an obligation to inspect "the information concerning the notice given, the timing of the notice, and the response of the tribe[s], so that [the court] may make a determination as to applicability of the ICWA, and thereafter comply with all of its provisions." (*In re Jennifer A.* (2002) 103 Cal.App.4th 692, 705 (*Jennifer A.*).)

As this court has explained, "[t]he purpose of the requirement that notice be sent to the designated persons is to ensure that notice is received by someone trained and authorized to make the necessary ICWA determinations, including whether the minors are members or eligible for membership and whether the tribe will elect to participate in the proceedings." (*J.T., supra*, 154 Cal.App.4th at p. 994.)

We review the court's finding that proper ICWA notice was given for substantial evidence. (*J.T., supra*, 154 Cal.App.4th at p. 991; *In re N.M.* (2008) 161 Cal.App.4th 253, 268.)

1. Adequacy of the Notices

As to the Eastern Band of Cherokee, the designated tribal agent and address for service of notice listed at 82 Fed. Reg. 12998 (3/8/2017) was Eastern Band of Cherokee Indians, Jenny Bean, Family Safety Supervisor, P.O. Box 666, Cherokee, NC 28719.

Here, the Notice of Child Custody Proceeding (ICWA-030) forms state that notice was sent to the Eastern Band of Cherokee Indians, EBCI Family Safety Program, Crystal Hicks, P.O. Box 666, Cherokee, NC 28719. The Data Sheet/Proof of Service states that notice was sent to the Eastern Band of Cherokee at "Dallas W. Pettigrew, MSW, Family Safety Program Manager, P.O. Box 666, Cherokee, NC 28719."

The parties offer no explanation why the address on the ICWA-030 is not identical to the address on the proof of service. Nonetheless, substantial evidence supports the conclusion that the notice was sent as required by law. There is no dispute that the notice was sent to the correct post office box, city, and state. Although it was directed to a different person than the one named in the Federal Register, bearing the title of Family Safety Program *Manager* rather than Family Safety *Supervisor*, it is reasonable to conclude that a notice to the Family Safety Program Manager at the correct mailing address would still be received by someone trained and authorized to make the necessary ICWA determinations. (See *J.T., supra*, 154 Cal.App.4th at p. 994.) [2]

[2] The Department requests that we take judicial notice of "ICWA Compliance Documents" filed in the juvenile court on November 15, 2018 – about five months after the appealed orders – including return receipts dated June 4 or 5, 2018, from the Bureau

As to the Cherokee Nation, the designated tribal agent and address for service of notice listed at 82 Fed. Reg. 12999 was Cherokee Nation, Nikki Baker-Linmore, Director, Division of Children Youth and Family Services, P.O. Box 948, Tahlequah, OK 74465. The ICWA-030 forms and the Data Sheet/Proof of Service state that notice was sent to the Cherokee Nation at the correct address, but was directed to "ICWA Representative" or "Nikki Baker-Linmore, Director of Indian Child Welfare." It is reasonable to conclude that notice to the ICWA Representative at the correct mailing address would be received by someone trained and authorized to make the necessary ICWA determination. Notice to Nikki Baker-Linmore is notice to the very person identified in the Federal Register. Under either iteration, substantial evidence supports the conclusion that the notice was adequate under the law.

As to the United Keetoowah Band of Cherokee, the designated tribal agent and address listed at 82 Fed. Reg. 13000 was United Keetoowah Band of Cherokee Indians in Oklahoma, Raven Owl, ICW Advocate, P.O. Box 746, Talequah, OK 74465.

The ICWA-030 forms and the Data Sheet/Proof of Service state that notice was sent to the tribe at the correct address, but was directed either to "Indian Child Welfare/ Family Svcs." or "Joyce Fourkiller-Hawk, Tribal Secretary," rather than to "Raven Owl ICW Advocate." Substantial evidence supports the conclusion that the notice complied with the law or that any error was harmless. It is reasonable to conclude that notice to "Indian Child Welfare/Family Svcs." at the address designated by the Federal Register would be delivered to a person trained and authorized to make the necessary ICWA determinations. (*J.T.*, *supra*, 154 Cal.App.4th at p. 994.) We reach the same conclusion as to notice sent to "Joyce Fourkiller-Hawk, Tribal Secretary," particularly since "Joyce Hawk, Tribal Secretary" was previously the designated agent (see 79 Fed. Reg. 72020).

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of Indian Affairs, United Keetoowah Bank of Cherokee, Eastern Band of Cherokee, and Cherokee Nation, as well as a letter dated June 14, 2018, from the Eastern Band of Cherokee stating that the children are not Indian children. We do not take judicial notice of these documents to decide whether the juvenile court erred, because the court did not have the documents when it ruled. (See *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1266–1268; *In re Jennifer A.*, *supra*, 103 Cal.App.4th at pp. 703–705.)

2. Tribal Responses Not Before the Court

Mother argues that the record does not reflect that copies of the return receipts or any letter from a tribe confirming or denying eligibility for tribal enrollment was before the court when it found that notice was given as required by law. That is true. But the court only ruled that the notice was *given* as required by law; it did not rule that the children were not Indian children or that ICWA did not apply. As explained *ante*, the ICWA notices and proofs of service in the court file were sufficient to support the court's ruling. Mother fails to establish reversible error.

B. Section 300 (j) Count

Mother does not challenge the jurisdictional finding sustained under section 300, subdivision (b), but contends the jurisdictional finding sustained under subdivision (j) should be modified to omit language suggesting that her whereabouts are unknown. The sustained j-1 allegation presently states: ". . . The parent's current whereabouts are unknown and they have continued to make inadequate care arrangements for their children. . . ."

A jurisdictional finding under one subdivision of section 300, if supported by substantial evidence, is sufficient to support jurisdiction and renders moot a challenge to the jurisdictional findings under other subdivisions. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875–876.) Mother points out that we nonetheless have discretion to consider a challenge to a finding under another subdivision if the finding could prejudice the appellant, impact current or future dependency proceedings, or pose consequences for the appellant beyond jurisdiction. (*In re D.P.* (2015) 237 Cal.App.4th 911, 916–917.)

Here, we will exercise such discretion but stop short of modifying the sustained allegation. Certainly it is odd that neither court nor counsel observed the inconsistency between the allegation that Mother's whereabouts were unknown and the fact that Mother was present in court and had signed and submitted a Notification of Mailing Address. But that very oddity raises the possibility that counsel may have had some reason, undisclosed on the record, to proceed with the allegation. The Department sheds no light

on this issue in its respondent's brief. We also note that the allegation states that the "parent's" – singular – current whereabouts are unknown, creating additional ambiguity. In any event, there is no indication that any of this was ever raised in the juvenile court, where it should have been. While Mother has not *waived* the issue by submitting on the social worker's report (*In re Tommy E.* (1992) 7 Cal.App.4th 1234, 1237–1239), the issue should still be addressed by the juvenile court in the first instance.

Accordingly, we will vacate the jurisdictional order to the extent it indicates that Mother's whereabouts were unknown at the time of the order, and remand for further consideration of the proper phrasing of the sustained j-1 allegation.

III. DISPOSITION

The jurisdictional order is vacated to the extent it indicates, as to sustained allegation j-1, that the whereabouts of Q.C. were unknown at the time of that order, and the matter is remanded for further proceedings consistent with this opinion. The jurisdictional and dispositional orders are in all other respects affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

BURNS, J.

(A154621)